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UNITED STATES OF AMERICA

14 UNITED STATES DISTRICT COURT
15
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,
18 Plaintiff,
19 v.
20 JERRY NEHL BOYLAN,
21 Defendant.

No. CR 22-482-GW

[PROPOSED] PROTECTIVE ORDER
REGARDING DISCOVERY CONTAINING
PERSONAL IDENTIFYING INFORMATION

22
23 The Court has read and considered the parties' Stipulation for
24 a Protective Order Regarding Discovery Containing Personal
25 Identifying Information, filed by the government and defendant JERRY
26 NEHL BOYLAN ("defendant") in this matter on May 3, 2023, which this
27 Court incorporates by reference into this order, and FOR GOOD CAUSE
28 SHOWN the Court hereby FINDS AND ORDERS as follows:

1 1. The government's discovery in this case relates to
2 defendant's alleged crime, that is, a violation of 18 U.S.C. § 1115:
3 Misconduct or Neglect of Ship Officer.

4 2. A protective order is necessary because the government is
5 being ordered to produce to the defense materials containing third
6 parties' PII, specifically, complete forensic images of data
7 extractions from four third-party digital devices, identified as FBI
8 Device Nos. 1B136, 1B174, 1B177, and 1B290 (the "Subject Data"),
9 that the defense will search pursuant to further search parameters
10 to be determined by the Court. (See Dkt. Nos. 39, 40.) The Court
11 finds that disclosure of the Subject Data without limitation risks
12 the privacy and security of the information's legitimate owners.
13 Because the government has an ongoing obligation to protect third
14 parties' PII, the government cannot produce to defendant an
15 unredacted set of the Subject Data without the Court entering the
16 Protective Order. In addition, in ordering the government to make
17 available the Subject Data to the defense, the Court directed that
18 the "parties are to discuss the terms of an appropriate protective
19 order." (Dkt. No. 39 at 3.)

20 3. The purpose of the Protective Order is to (a) allow the
21 government to comply with the Court's Order regarding the Subject
22 Data (Dkt. No. 40) while protecting this sensitive information from
23 unauthorized dissemination, and (b) provide the defense with
24 sufficient information to adequately represent defendant. To be
25 clear, the proposed Protective Order is intended to supplement, not
26 supplant, the parameters and procedures for the defense's review of
27 the Subject Data as ordered by the Court.

1 4. Accordingly, the discovery that the government will
2 provide to defense counsel in the above-captioned case will be
3 subject to this Protective Order, as follows:

4 a. "PII Materials" includes any information that can be
5 used to identify a person, including a name, address, date of birth,
6 Social Security number, driver's license number, telephone number,
7 account number, email address, or personal identification number.

8 b. "Confidential Information" refers to any document or
9 information containing PII Materials that the government produces to
10 the defense pursuant to this Protective Order and any copies
11 thereof.

12 c. "Defense Team" includes (1) defendant's counsel of
13 record ("defense counsel"); (2) other attorneys at defense counsel's
14 law firm who may be consulted regarding case strategy in this case;
15 (3) defense investigators who are assisting defense counsel with
16 this case; (4) retained experts or potential experts; and
17 (5) paralegals, legal assistants, and other support staff to defense
18 counsel who are providing assistance on this case. The Defense Team
19 does not include defendant, defendant's family members, or any other
20 associates of defendant.

21 d. Notwithstanding any of the terms and conditions set
22 forth below, with regards to the complete forensic images of the
23 Subject Data, which the government will designate as Confidential
24 Information, under no circumstances shall the Defense Team,
25 defendant, defendant's family members, or any other associates of
26 defendant have access to the complete forensic images of the Subject
27 Data; the only individual who shall have access to the Subject Data
28 shall be the individual identified by the defense and designated by

1 the Court to conduct an initial review of the Subject Data
2 (hereinafter, the "Forensic Analyst"), subject to the search
3 parameters to be ordered by the Court (see Dkt. 40). Once the
4 Forensic Analyst reviews the Subject Data and identifies and
5 isolates material, if any, responsive to the applicable search
6 parameters (hereinafter, the "Seized Material"), the Seized Material
7 shall also be deemed Confidential Information and must be treated in
8 accordance with all other terms of this Protective Order. The
9 Defense Team and defendant may only have access to the Seized
10 Material, subject to the terms set forth below.

11 e. The government is authorized to provide defense
12 counsel with Confidential Information marked with the following, or
13 substantially similar, legend: "CONFIDENTIAL INFORMATION -- CONTENTS
14 SUBJECT TO PROTECTIVE ORDER." The government may put that legend on
15 the digital medium (such as DVD or hard drive) or simply label a
16 digital folder on the digital medium to cover the content of that
17 digital folder.

18 f. If defendant objects to a designation that material
19 contains Confidential Information, the parties shall meet and
20 confer. If the parties cannot reach an agreement regarding
21 defendant's objection, defendant may apply to this Court to have the
22 designation removed.

23 g. Defendant and the Defense Team shall use the
24 Confidential Information solely to prepare for any pretrial motions,
25 plea negotiations, trial, and sentencing hearing in this case, as
26 well as any appellate and post-conviction proceedings related to
27 this case.

1 h. The Defense Team shall not permit anyone other than
2 the Defense Team to have possession of Confidential Information,
3 including defendant, while outside the presence of the Defense Team.

4 i. At no time, under no circumstance, will any
5 Confidential Information be left in the possession, custody, or
6 control of defendant, regardless of defendant's custody status.

7 j. Defendant may review Confidential Information only in
8 the presence of a member of the Defense Team, who shall ensure that
9 defendant is never left alone with any Confidential Information. At
10 the conclusion of any meeting with defendant at which defendant is
11 permitted to view Confidential Information, defendant must return
12 any Confidential Information to the Defense Team, and the member of
13 the Defense Team present shall take all such materials with him or
14 her. Defendant may not take any Confidential Information out of the
15 room in which defendant is meeting with the Defense Team.

16 k. Defendant may see and review Confidential Information
17 as permitted by this Protective Order, but defendant may not copy,
18 keep, maintain, or otherwise possess any Confidential Information in
19 this case at any time. Defendant also may not write down or
20 memorialize any data or information contained in the Confidential
21 Information.

22 l. The Defense Team may review Confidential Information
23 with a witness or potential witness in this case, including
24 defendant. A member of the Defense Team must be present if
25 Confidential Information is being shown to a witness or potential
26 witness. Before being shown any portion of Confidential
27 Information, however, any witness or potential witness must be
28 informed of, and agree in writing to be bound by, the requirements

1 of the Protective Order. No member of the Defense Team shall permit
2 a witness or potential witness to retain Confidential Information or
3 any notes generated from Confidential Information.

4 m. The Defense Team shall maintain Confidential
5 Information safely and securely, and shall exercise reasonable care
6 in ensuring the confidentiality of those materials by (1) not
7 permitting anyone other than members of the Defense Team, defendant,
8 witnesses, and potential witnesses, as restricted above, to see
9 Confidential Information; (2) not divulging to anyone other than
10 members of the Defense Team, defendant, witnesses, and potential
11 witnesses, the contents of Confidential Information; and (3) not
12 permitting Confidential Information to be outside the Defense Team's
13 offices, homes, vehicles, or personal presence.

14 n. To the extent that defendant, the Defense Team,
15 witnesses, or potential witnesses create notes that contain, in
16 whole or in part, Confidential Information, or to the extent that
17 copies are made for authorized use by members of the Defense Team,
18 such notes, copies, or reproductions become Confidential Information
19 subject to the Protective Order and must be handled in accordance
20 with the terms of the Protective Order.

21 o. The Defense Team shall use Confidential Information
22 only for the litigation of this matter and for no other purpose.
23 Litigation of this matter includes any appeal filed by defendant and
24 any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the
25 event that a party needs to file Confidential Information with the
26 Court or divulge the contents of Confidential Information in court
27 filings, the filing should be made under seal. If the Court rejects
28 the request to file such information under seal, the party seeking

1 to file such information publicly shall provide advance written
2 notice to the other party to afford such party an opportunity to
3 object or otherwise respond to such intention. If the other party
4 does not object to the proposed filing, the party seeking to file
5 such information shall redact any Confidential Information and make
6 all reasonable attempts to limit the divulging of Confidential
7 Information.

8 p. Confidential Information shall not be used by the
9 defendant or Defense Team, in any way, in any other matter, absent
10 an order by this Court. All materials designated subject to the
11 Protective Order maintained in the Defense Team's files shall remain
12 subject to the Protective Order unless and until such order is
13 modified by this Court. Within 30 days of the conclusion of
14 appellate and post-conviction proceedings, defense counsel shall
15 return all Confidential Information, certify that such materials
16 have been destroyed, or certify that such materials are being kept
17 pursuant to the California Business and Professions Code and the
18 California Rules of Professional Conduct.

19 q. In the event that there is a substitution of counsel
20 prior to when such documents must be returned, new defense counsel
21 must be informed of, and agree in writing to be bound by, the
22 requirements of the Protective Order before the undersigned defense
23 counsel transfers any Confidential Information to the new defense
24 counsel. New defense counsel's written agreement to be bound by the
25 terms of the Protective Order must be returned to the Assistant U.S.
26 Attorney assigned to the case. New defense counsel then will become
27 the Defense Team's custodian of materials designated subject to the
28 Protective Order and shall then become responsible, upon the

1 conclusion of appellate and post-conviction proceedings, for
2 returning to the government, certifying the destruction of, or
3 retaining pursuant to the California Business and Professions Code
4 and the California Rules of Professional Conduct all Confidential
5 Information.

6 r. Defense counsel shall advise the Forensic Analyst,
7 defendant, and all members of the Defense Team of their obligations
8 under the Protective Order and ensure their agreement to follow the
9 Protective Order, prior to providing the Forensic Analyst,
10 defendant, and members of the Defense Team with access to any
11 materials subject to the Protective Order.

12 IT IS SO ORDERED.

13
14 _____
DATE

HONORABLE GEORGE H. WU
UNITED STATES DISTRICT JUDGE

15
16 Presented by:

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18 _____
/s/
19 MARK A. WILLIAMS
20 MATTHEW W. O'BRIEN
21 BRIAN R. FAERSTEIN
22 JUAN M. RODRIGUEZ
23 Assistant United States Attorneys
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